IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.27 of 2016 (O&M)
Date of Decision: 03.05.2016

IN THE MATTER OF :

Company Petition under Sections 391 & 394 read with Section 100 to 104 of the Companies Act, 1956.

AND

IN THE MATTER OF:

THE SCHEME OF ARRANGEMENT OF:

Scope E-Knowledge Center Private Limited

. . . . Petitioner Company No.1

AND

Quatrro Global Services Private Limited

. . . . Petitioner Company No.II

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN.

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Present: - Ms.Munisha Gandhi, Sr.Advocate, with
Mr.Deepak Suri, Advocate,
for the petitioners.

Mr.Deepak Aggarwal, Advocate, with
Mr.D.K. Singh, Official Liquidator.

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RAKESH KUMAR JAIN, J.

This petition is filed under Sections 391 & 394 read with Section 100 to 104 of the Companies Act, 1956 [for short 'the Act'], duly supported by affidavit of the Petitioner-Companies, seeking sanction of the Scheme of Arrangement [for short 'the Scheme] vide which Scope e-Knowledge Center Private Limited/Transferor Company shall merge into Quatrro Global Services Private Limited/Transferee Company.

The main objects of the Scope e-Knowledge Center Private Limited/Transferor Company and Quatrro Global Services Private Limited/Transferee Company are detailed in their respective Memorandum and Articles of Association, which are annexed with the petition as Annexures P-3 and P-6, respectively.

The registered office of the Scope e-Knowledge Center Private Limited/Transferor Company and Quatrro Global Services Private Limited/Transferee Company is at Gurgaon.

The Board of Directors of Scope e-Knowledge Center Private Limited/Transferor Company and Quatrro Global Services Private Limited/Transferee Company have approved the Scheme of arrangement in their respective meeting held on 01.12.2015. Their resolutions are annexed with the petition at Annexures P-2 (Colly).

Earlier the transferor and transferee had approached this Court by way of CP No.224 of 2015 in which vide order dated 08.12.2015 convening of meetings of the Equity Shareholders and Unsecured Creditors of Transferor Company and Secured and Unsecured Creditors of the Transferee Company were dispensed with because of the consent to the Scheme of Arrangement given by them.

However, the meeting of Equity Shareholders of the Transferee Company was ordered to be convened, which were to be held on 23.1.2016 for which, the Chairman and Co-chairman were appointed. The Chairman of the said meeting has submitted his report on the basis of which CP No.224 of 2015 was disposed of on 01.02.2016.

Notice of the second motion petition was issued on 5.2.2016 to the Regional Director, Ministry of Corporate Affairs, New

Delhi and the Official Liquidator. It was also ordered that a notice be published in the newspapers, namely, “Financial Express” (English) and “Jansatta” (Hindi) both Delhi/NCR Edition and in the Official Gazette of the Government of Haryana besides it being uploaded on the official website of the Official Liquidator. Pursuant thereof, affidavit of publication dated 09.3.2016 has been filed.

The Official Liquidator has filed the representation/affidavit dated 13/18.4.2016 of A.K. Chaturvedi, Regional Director, who has raised an objection in para No.8.5 that the Accounting Certificate certifying application for Accounting Standard-14 has not been furnished. He has also raised an objection in para No.9 of his representation/affidavit. Para No.8.5 and 9 are reproduced as under: -

> “8.5 *That the Deponent states that the Petitioner Companies have vide para No.34 of the reply stated that the accounting treatment proposed in the books of Quatrro Global Services Limited (i.e. the Transferee Company) on merger of Scope e-Knowledge Center Private Limited into Quatrro Global Services Private Limited is according to Accounting Standard (AS-14) – Accounting for Amalgamation issued by the Institute of Chartered Accountatns of India and the same is specified in Clause 10 of Part-B of the Scheme. However, the Petitioner Companies have not furnished certificate from the statutory auditors of Transferee Company that the Accounting Treatment proposed is not in violation of AS issued by the Central Government.*
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> *9. That the Deponent states that the Registrar of Companies vide para 31 of the report has stated that the Scheme in paragraph*

13 envisages Capital Reduction of QGS India (Transferee Company). Pursuant to amalgamation of Scope India with QGS India becoming effective. The face value of equity share of Re.1 each of QGS India will be reduced to Re.0.5 each. To the extent of reduction in face value of equity shares of QGS India, an amount is to be credited to the Capital Reserve Account. This shall tantamount to subscribed and paid up share capital of Rs.1,768,443,823/- being reduced by Rs.88,422,912/- which shall be credited to the Capital Reserve Account such that the issued capital after the Effective Date would be Rs.884,221,991/-. This exercise shall not give any effect on Asset side of the Balance Sheet and does not affect/disturb any liability/ accumulated loss, if any. As such, the reasons for the proposed reduction of capital of QGS India (Transferee Company) have not been stated and therefore it is not clear if it at all falls within the ambit of provisions stipulated under Section 100(1) of the Companies Act, 1956. .

In reply to the objections raised by the Regional Director, an affidavit dated 23.4.2016 of Amitabh Johri, authorised signatory of both the Petitioner-Companies as mentioned in their respective Board Resolutions, has been filed in which following explanations/averments have been made:

"2. That as far as the observations raised in Para 8.5 and Para 12 of the Affidavit of the Regional Director is concerned, it is submitted that:

The Petitioner Company has obtained certificate from the Statutory Auditors *which states that the accounting treatment specified in the Clause 10 of the Scheme is in compliance with the Accounting Standard (AS-14 Accounting for Amalgamations) issued by the Institute of Chartered Accountants of India. The certificate is annexed herewith as **"Annexure- 1**." Further the Petitioner Company undertakes to comply with the provisions of the Accounting Standard 14 related to the pooling of interests method as prescribed under Section 211(3C) of the Companies Act, 1956 and under Section 133 of the Companies Act, 2013 as stated in clause 10 of the Scheme of Amalgamation.*

3.2 That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with Clause 31 of the report of the Registrar of Companies is concerned, it is submitted that:

(a) The Scheme of Arrangement provides for merger of Scope India into QGS India and reduction of share capital of QGS India.

(b) Scope India is 100% (entire stake) held by QGS India. The shareholders of QGS India hold business of Scope India via QGS India. The restructuring is within the subsidiary (Scope India) and the holding company (QGS India).

(c) Clause 13 of the Scheme provides for capital reduction of face value of equity share of Re.1 each of QGS India to Re 0.5 each under Section 100 to 104 of the Companies Act, 1956 (The Act) and the same is an integral part of the Scheme. Further, the said reduction does not involve

payment of any paid up share capital and hence provisions of Section 101 of the Act will not be applicable.

(d) The Petitioner Company would like to further submit that reduction of face value of equity share of Re.1 each of QGS India to Re 0.5 each is an arrangement between the Company and its shareholders. Further, the Scheme has been approved by the Board of Directors of both the Petitioner Companies vide the Board Resolution dated December 1, 2015. Further, the creditors and members of both the Petitioner Companies involved in the Scheme have given their consent to the said scheme. The clause 9, 10 and 11 of the RoC report also acknowledges the fact that the consent of the creditors and members of the petitioner companies were obtained.

(e) Section 100 of the Companies Act, 1956 is reproduced as under:

"(1) Subject to confirmation by the Tribunal, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may -

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay of any paid-up share capital which is in excess of the wants of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital"."

(f) As stated above in para (d), the company has obtained approval of shareholders vide special resolution for reduction of share capital.

(g) Accordingly, the reduction in the face value of equity share is within the purview of section 100 (1) of the Companies Act, 1956.

(h) The Petitioner Company further submits that the proposed reduction of share capital is under Section 391 to Section 394 read with Section 100 to Section 104 of the Act. The petitioner company further submits that various Courts in various judgments such as Maneckchowk & Ahmedabad Manufacturing Company

Limited vs Unknown (1970 (40) CompCas 819 (Gujarat)), Gujarat Ambuja Exports Ltd. vs Unknown (2004 118 CompCas 265 Guj), Pmp Auto Industries Ltd. (1991 (CC2) GJX 0203 BOM) held that Section 391 is not only a complete code but it is intended to be in a nature of a "single window clearance" system to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated application to the Court for various other alterations or changes and avoid unnecessary duplication of procedure. Further, recently the High Court of Punjab and Haryana at Chandigarh in case of Q.H. Talbros Limited (Company Appeal No.52) again held that Section 391 is not only a complete code but it is intended to be in a nature of a "single window clearance" system.

(i) *Further, the Supreme Court in Miheer H. Mafatlal vs Mafatlal Industries Ltd (AIR 1997 SC 506) has held that the jurisdiction of the Court is supervisory in nature and that of an appellate body. Further, the commercial wisdom of the parties to the Scheme which have been supported by the members and creditors of the Scheme should not be challenged unless the company has not followed the statutory process or the Scheme is prejudicial to public interest. The extract of the Judgment is reproduced hereunder:*

"it is the commercial wisdom of the parties to the scheme who have taken

an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the court. The court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise, as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by the requisite majority. Consequently, the company court's jurisdiction to that extent is peripheral and supervisory and not appellate. The court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire".

"The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meeting as contemplated by Section 391(1)(a) have been held." And that "the proposed scheme of compromise and arrangement is not found to be

violative of any provision of law and is not contrary to public policy"

(j) *In view of the above, the petitioner company respectfully submits that as all the provisions laid down in Section 391 read with Section 100 have been complied with and the arrangement is between the shareholders and the company which is not prejudicial to the interest of the public and the petitioner company has already obtained approval from shareholders and creditors, the objection raised in the report of Regional Director would be unsustainable."*

The Official Liquidator in its report dated 09.03.2016 has not raised any objection rather made the following averments: -

"8. That the books of accounts, Audited Financial Statements, other records and papers of the company provided to us by the transferor company, have been scrutinized and to the best of our knowledge and belief were are of the opinion that the affairs of the company are conducted in the manner not prejudicial to the members of to public interest.

11. That in view of the observations of the Chartered Accountant the Official Liquidator most respectfully submits that the affairs of the company are conducted in the manner not prejudicial to the members or to public interest."

The above-stated explanations submitted by Amitabh Johri, authorised signatory of the Petitioner-Companies, meet the queries raised by the Regional Director and Official Liquidator.

It is further submitted by counsel for the Petitioner-Companies that no investigation proceedings are pending against the petitioner-Companies under Sections 235 to 251 of the Act.

For the reasons mentioned hereinabove, on the consideration of all the relevant facts, the procedural requirements contemplated under Sections 391 & 394 of the Act and the relevant Rules and on due consideration of the reports of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and Official Liquidator, the Scheme of Arrangement is hereby sanctioned and as a result thereof, the assets and liabilities of the Scope e-Knowledge Center Private Limited/Transferor Company shall stand vested in the Quatrro Global Services Private Limited/Transferee Company and the Transferor Company shall be dissolved without being wound up.

The Scheme of Arrangement shall be binding on the Scope e-Knowledge Center Private Limited/Transferor Company, Quatrro Global Services Private Limited/Transferee Company, their respective Equity Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

A notice of the order be published in the newspapers, namely, "Financial Express" (English), "Jansatta" (Hindi) both Delhi/NCR Edition and in the Official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the Petitioner-Companies states that the Petitioner-Companies would voluntarily deposit a sum of ₹1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

03.05.2016
Vivek